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January 26, 2015

The Honorable Bill Montford
The Florida Senate
214 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Senator Montford:

Thank you for your letter of January 13, 2015. This response addresses the questions pertaining to “opt out.” Your questions are italicized with my responses beneath them.

1) Under what circumstances is it lawful for students to be exempted from either statewide, standardized assessments or state-required local assessments? Under what circumstances is it lawful for students to be exempted from district-mandated, district-selected assessments?

Section 1008.22(3), F.S., states, “Participation in the assessment program is mandatory for all school districts and all students attending public schools....” Section 1008.25(4)(a), F.S., states, “Each student must participate in the statewide, standardized assessment program required by s. 1008.22.”

Section 1008.212, F.S., provides for an extraordinary exemption for a student “...for whom the individual education plan (IEP) team determines is prevented by a circumstance or condition from physically demonstrating the mastery of skills that have been acquired and are measured by the statewide, standardized assessment, a statewide standardized end-of-course assessment, or an alternate assessment...” This decision must include the parent and must be submitted to the district superintendent not later than 60 days before the current year’s assessment administration. Specific documentation must be provided to the district superintendent as listed in the law. The district superintendent then submits this evidence to the Commissioner of Education who shall grant or deny the exemption.

A child with a medical complexity may be exempt if the child’s health concerns meet the definition of medical complexity in section 1008.22(9), F.S., and the parent agrees. In addition, a child with a medical complexity may be exempt from participating in statewide assessments for one, two, or three years, or permanently, based upon the district superintendent’s request. The

State Board of Education amended Rule 6A-1.0943, F.A.C., in November 2014 to implement this law.

Exemptions from local assessments, including state-required local assessments and district-mandated, district-selected assessments, are, like all decisions related to these assessments, a local school board responsibility.

2) What differences, if any, exist in lawful, allowable exemptions between those exemptions pertaining to statewide, standardized assessments, state-required local assessments, and any exemptions from district-mandated, district-selected assessments which are not in response to state mandates? Please explain.

There is no state or legislative policy that guides local exemptions from local assessments. School districts are the most appropriate source of information on whether they allow exemptions and, if so, under what circumstances.

3) What pupil progression or other consequences, if any, will apply to students if they or their parents "opt out" of statewide, standardized assessments or state-required local assessments? For example, could choosing not to participate in required assessments impact a student's promotion to the next grade level, affect the student's ability to earn course credit or graduate with a standard diploma, impede the student's access to accelerated course or school choice options, affect the student's access to extracurricular activities, or impact the student's grade point average calculations? If so, how would those consequences compare between students that "opt out" and their colleagues that participate in the assessments?

If students were to opt out, students and parents would not know whether students have mastered the subject content in their courses, which is a basic process of learning. If the assessment is the Grade 10 English language arts (ELA) assessment or Algebra I assessment, the student would need to earn a passing score on the SAT, ACT or PERT, as appropriate, to graduate from high school. These other assessments may come at a cost to the student. In addition, there are several risks for a student who does not participate in other required assessments.

Regarding the statewide end-of-course assessments (biology, US history, algebra I, geometry, algebra II, and civics), results from these assessments constitute 30% of a student's course grade (section 1003.4282, F.S.) in the courses where those assessments are required. Failing to take the assessment will lower the student's course grade, negatively impacting the student's grade point average (GPA), which also affects:

- High school graduation and receipt of a standard diploma,

- Local student progression to the next grade level that requires a minimum GPA and/or earned course credits,
- Athletic and other extracurricular eligibility,
- Scholarship eligibility, including Bright Futures,
- University, other postsecondary, and military admissions eligibility,
- Class ranking and local recognition such as Valedictorian or Salutatorian, and
- Eligibility for a scholar designation or merit designation on the high school diploma.

Students may also lose the following benefits by opting out of one or more state or local assessments:

- College-ready assessments that determine college readiness or eligibility to enroll in 12th grade courses that prepare students for college readiness,
- Local recognition for identification of top scholars and statewide recognition of top scholars,
- Scores used by local districts to determine course placement, gifted and talented candidates, and/or accelerated course access,
- Completion of English for Speakers of Other Languages programs,
- Preparation for future opportunities in postsecondary, career, and life where assessments are required to progress and participate,
- Promotion to fourth grade (section 1008.25, F.S.), and
- In eligible low-performing schools, the ability to seek other options under the Opportunity Scholarship Program (section 1002.38, F.S.).

How assessments factor into student outcomes such as pupil progression or course grades is a local decision. Clearly, there are potential remedial course implications for students who opt out of state or local assessments. Through the information we are collecting for the test investigation, districts have indicated that they have local policies that could affect students in one or more ways listed here.

4) What professional practices or other consequences, if any, may apply to educators (e.g., teachers, administrators, counselors, superintendents) if they encourage, allow, or fail to report "opt out" practices or instances? What obligations do educators have to inform their district and the department of "opt out" practices or instances about which they are aware?

Each situation/allegation would have to be reviewed based upon the actions or non-actions of the certified educator and how those actions impact the student, the public, and/or the profession. I do believe the laws, rules, and precedents established by prior legal decisions and/or orders establish a foundation to support that certain willful opt-out behaviors may warrant disciplinary action against an educator's certificate. As for obligations to report, the department would consider an educator's refusal to administer statutorily-required assessments as a potential violation of established standards of conduct that should be reported to the department.

Reporting acts of misconduct is a duty of the district superintendent per section 1012.796, F.S., and failure to do so could result in discipline including forfeiture of salary per section 1001.51(12), F.S.

5) What funding, school or district grade, or other consequences, if any, will apply to schools or districts if they encourage, allow, or fail to report "opt out" practices or instances? What obligations do schools and districts have to inform the department of "opt out" practices or instances about which they are aware? To what extent does the department consider allowing or failing to report "opt out" practices or instances to be a test integrity or security issue?

The State Board of Education may take the following actions under section 1008.32, F.S., in any circumstance where a district fails to comply with state law (including non-compliance with the assessment statute and each of the other statutes for which the district would be out of compliance listed in this document):

- Withhold the transfer of state funds, discretionary grant funds, or discretionary lottery funds until the district complies,
- Declare the district ineligible for competitive grants,
- Require reporting until the district complies, and
- Report to the legislature that the district is unwilling to comply with the law and recommend action to be taken by the legislature.

Additional consequences may include:

- The district's forfeiture of eligibility for various federal grants based on accountability, including, for example, funds in the entitlement areas (Title I, Title II, Title III, Perkins, IDEA, etc.)
- The forfeiture could have a permanent effect at the district level for those federal programs that contain a non-supplanting or a "maintenance of effort" requirement, such that the district will have to continue funding at a higher level, even after the district regains federal funding in subsequent years in order to avoid supplanting violations.
- As constitutional officers, school board members and elected district superintendents may face suspension by the Governor and removal by the Senate [Art. IV, Section 7, Florida Constitution. See also In re Advisory Opinion to the Governor-School Board Member-Suspension Authority, 626 So.2d 684 (Fla. 1993)].

A school in a district that opts out of testing also faces:

- Not receiving a school grade. Parents and the school community will be unable to access useful information about local school performance. Ninety-five percent of eligible students must be assessed in order to receive a school grade (section 1008.34, F.S.),
- Loss of school recognition funds (section 1008.36, F.S.),

- Disciplinary charges for certified instructional personnel, who are determined to be responsible, (section 1012.795, F.S.), and
- Difficulty identifying highly effective teachers, placing teachers appropriately, and removing incompetent teachers (section 1012.34(3)(a)1., F.S.).

If students were to be present during the test but choose not participate, this would not pose a risk to test security as long as these students do not interfere with the rights of other students who are testing, and they do not reveal or discuss any test content that they view. These two expectations are the same for all students, whether they participate in testing or not. Regarding the question of test integrity, opting out may have an impact on the ability to interpret the test results in a meaningful way. Depending upon the extent to which students opt out, school, district, or possibly statewide results might not accurately reflect student achievement, and would make it difficult to make teacher, school, district, or state comparisons. This would affect not only same-year comparisons, but also year-to-year comparisons as well.

6) What written, formal guidance is the department providing, or has the department provided, to school boards, superintendents, principals, teachers, parents, and students of all consequences associated with assessment "opt out" or non-participation practices or instances?

State law requires students to participate in the state assessment system; therefore, there is no opt out clause or process for students to opt out or for parents to opt their children out. The department, when asked questions by parents, district officials, and other constituents related to opting out, has cited section 1008.22(3), F.S., which states, "Participation in the assessment program is mandatory for all school districts and all students attending public schools, including students seeking an adult high school diploma under s. 1003.4282 and students in Department of Juvenile Justice education programs, except as otherwise prescribed by law...." Working closely with superintendents in particular, this information and other information requested was provided in a manner that was responsive to their needs both at the time and with thoughtful consideration of their needs throughout this transition year.

Florida's statewide assessment system supports instruction and student learning of the Florida Standards. It helps Florida determine whether the goals of the education system are being met through student, school, and district accountability systems. Assessments help Floridians determine whether we have equipped our students with the knowledge and skills they need to be ready for careers and college-level coursework.

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I will provide you with additional responses to the questions in your letter by the indicated due dates. I look forward to working with you as we work to make good decisions for children.

Sincerely,



Pam Stewart